

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

September 19, 1989
AO-89-21

William A. McDermott, Esquire
Sullivan, McDermott and Hogan
25 New Chardon Street
Boston, MA 02114

Dear Mr. McDermott:

This letter is in response to your recent request for an advisory opinion concerning certain activities your client, the Massachusetts Municipal Association (the "Association") wishes to undertake in an effort to place an initiative petition on the ballot. The Association intends to establish a separate political committee (the "Committee") to raise and expend money for this effort.

You have stated that the Association receives its financial support largely from assessments made on its members, all of whom are cities and towns in the Commonwealth. An invoice is sent to each municipality and a check from the municipal treasury is returned to the Association. All of the revenue derived by the Association from this source is thus tax revenue.

In addition, the Association receives revenue from members of the public and the business community for certain services. For example, an entity might pay a fee for an exhibition booth at a public convention or seminar.

The members of the Association's Board of Directors are unpaid and consist of elected city and town officials and appointed officials such as a manager or a financial officer. No appointed official will be involved in fundraising efforts of the Committee, but the elected officials may participate in such efforts.

You have posed the following questions:

1. Can paid staff of the Association participate in any fundraising effort for the Committee on their own time?

Section 13 of M.G.L. c.55 states, in pertinent part, "[n]o person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or

promise of money or other thing of value for the political campaign purposes of . . . any political committee, or for any political purpose whatever, but this section shall not prevent such persons from being members of political organizations or committees . . . "

It is the opinion of this office that the paid staff of the Association are not "employed for compensation by the commonwealth or any county, city or town" and are therefore permitted to fundraise on behalf of the Committee on their own time.

We would also alert you to prohibitions contained in certain city charters (i.e. those for Plan E and Plan F cities) which would prohibit fundraising activity on the part of any public employee, including elected officials.

2. Can an auditing system be set up separating funds received by the Association from municipalities and funds received from private entities which would allow for certain Association employees to be active on the initiative campaign during certain work hours as long as the Association reports the services as an in-kind contribution?

The campaign finance law does not permit appropriated public monies (and governmental resources paid for by such monies) to be used for political purposes. See generally Anderson v. City of Boston, 376 Mass. 178 (1978). Therefore the monies the Association receives as dues from municipalities may not be used for the initiative campaign.

It is the opinion of this office that an auditing system designed to separate municipal funds from other funds would be insufficient to overcome the prohibition against the use of appropriated monies. It has been the policy of this office that an accounting system alone is not enough to overcome prohibitions in the campaign finance law and that physically separate accounts must be established to ensure there is no commingling of permitted and prohibited monies.

Therefore, the portions of the paid staffers' salaries and associated operating expenses for items such as rent, utilities and telephones, which would be attributable to the initiative campaign may not be treated as an in-kind contribution from the Association to the Committee. The Committee may, of course, reimburse the Association for any proportionate share of such salaries and operating expenses. Also, a third party could reimburse the Association on behalf of the Committee and treat such reimbursement as an in-kind contribution.

3. Is there any limit on the value of services that the Committee may receive?

As discussed above, the Association may not make in-kind contributions to the Committee because of the nature of the appropriated monies it receives. Any other private entity may make contributions without limit to ballot question committees such as the Committee, provided such contributions are disclosed by the Committee and the entity making the contribution. If the entity is a profit or non-profit corporation, a Form CPF 22 must be filed. If the entity is other than another political committee or corporation, a Form CPF 12 must be filed (please see enclosed Interpretative Bulletin 105 "The Applicability of the Campaign Finance Law to Organizations Other Than Political Committees" for additional information). Individuals may also make contributions without limitation to ballot question committees such as the Committee. Such contributions would be reported by the ballot question committee.

4. Can any dedicated space leased by the Association be utilized by the Committee for its purposes so long as a lease payment arrangement is made requiring an expenditure by the Committee for its market value?

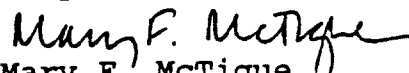
The regulations promulgated under M.G.L. c.55 provide that political committees may make expenditures for "reasonable and necessary expenses in connection with operation of a campaign office or offices." These expenses may be for telephones, furniture, office rent and equipment and utilities. 970 C.M.R. 2.05(2)(h).

It is the opinion of this office that the Committee may sublet office space from the Association provided the fair market value for such space (a pro rated portion of the lease and any utilities and other operation expenses) is paid by the Committee. In addition, the cost of any services, facilities, supplies, equipment or personnel supplied by the Association must also be reimbursed by the Committee to the Association.

This opinion has been issued solely in the context of M.G.L. c.55 and solely on the basis of the representations made in your letter.

Should you have additional questions, please do not hesitate to contact this office.

Very truly yours,


Mary F. McTigue
Director

enclosure
MFM/wp